

Decision No. 28985.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of Application of SAN JOSE  
RAILROADS and SOUTHERN PACIFIC COMPANY  
for authority to abandon that certain  
line of street railway operated by San  
Jose Railroads along Market Street, Park  
Avenue and Bird Avenue in the City of  
San Jose, and along Coe and Lincoln  
Avenues in the City of Willow Glen;

and

Application of SAN JOSE RAILROADS for  
certificate of public convenience and  
necessity for the operation of a motor  
coach line between the cities of San  
Jose and Willow Glen along the route  
of the street railway line so to be  
abandoned.

Application No. 20010

ORIGINAL

BY THE COMMISSION:

O R D E R

San Jose Railroads and Southern Pacific Company have  
filed an application to abandon certain street railway tracks  
operated by San Jose Railroads in the cities of San Jose and  
Willow Glen, and to substitute motor coach service reaching  
the same territory.

The rail lines which it is proposed to abandon are  
described as follows:

Applicants' line in San Jose along Park Avenue  
between Delmas Avenue and Market Street, along  
Market Street between Park Avenue and the present  
Southern Pacific station, including loop along  
Bassett Street, Little Market Street and Julian  
Street.

Applicants' line in San Jose along Bird Avenue  
between San Carlos Street and the southerly  
boundary of the City of San Jose.

Applicants' line in the City of Willow Glen and the County of Santa Clara, commencing at the southerly boundary of the City of San Jose at the intersection of Coe and Bird Avenues, extending thence southerly and westerly along Coe Avenue to Lincoln Avenue, and thence southerly along Lincoln Avenue to Minnesota Avenue.

The application recites that these street railway lines are free from encumbrances except a lien securing the outstanding bonds of San Jose Railroads. Southern Pacific Company is the owner of all outstanding bonds and consents to the abandonment and joins in the application. The cities of San Jose and Willow Glen have approved the proposed substitution.

It appears that this is not a matter in which a public hearing is necessary; that the proposed motor coach service will adequately serve the district affected; and that the application to abandon should be granted and a certificate of public convenience and necessity issued to San Jose Railroads for the proposed motor coach service.

San Jose Railroads is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

IT IS HEREBY ORDERED that San Jose Railroads and Southern Pacific Company are hereby granted authority to abandon the above-described street railway lines in the cities of San Jose and Willow Glen, Santa Clara County, California, on ten days' notice to the public and this Commission, provided motor coach service, certificate for which is herein granted, is established coincident with the abandonment of rail service on said lines.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity is hereby granted to San Jose Railroads for motor coach service over and along the following described route:

From the intersection of Market and Bassett Streets in the City of San Jose, to Lincoln Avenue and Michigan Avenue in the City of Willow Glen; by way of Market Street, Park Avenue, Delmas Avenue, San Carlos Street, Bird Avenue, Coe Avenue and Lincoln Avenue

subject to the following conditions:

- (1) Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
- (2) Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules now in effect on the rail lines to be abandoned.
- (3) Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
- (4) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
- (5) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (6) Applicant is authorized to turn its motor vehicles at termini, either in the intersection of the streets or by operating around a block contiguous to such intersection in either direction and to carry passengers, as traffic regulations of the municipalities may require.

For all other purposes the effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of June, 1935.

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M B Harris,

Malcolm A. Mason

Frank R. Kelly

Commissioners.